APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-5014 and 75-5015

JEFFERSON DOYLE,

Petitioner,

—*v.*—

STATE OF OHIO,

Respondent;

and

RICHARD WOOD,

Petitioner,

—*v.*—

STATE OF OHIO,

Respondent.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, TUSCARAWAS COUNTY

PETITIONS FOR CERTIORARI FILED JULY 2, 1975
CERTIORARI GRANTED OCTOBER 6, 1975

In the Supreme Court of the United States

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ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, TUSCARAWAS COUNTY

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CHRONOLOGICAL LIST OF RELEVANT DATES

State of Ohio v. *Jefferson Doyle*, Common Pleas Court, Tuscarawas County, Ohio, Case No. 10656:

June 7, 1973—Indictment filed.

July 18, 1973—Not guilty plea entered.

October 10, 1973—Trial commenced.

October 15, 1973—Guilty verdict returned.

October 16, 1973—Judgment Entry on verdict and sentencing.

January 6, 1975—Conviction affirmed by Court of Appeals.

May 9, 1975—Appeal dismissed by Supreme Court of Ohio.

State of Ohio v. *Richard Wood*, Common Pleas Court, Tuscarawas County, Ohio, Case No. 10657:

June 7, 1973—Indictment filed.

July 18, 1973—Not guilty plea entered.

October 2, 1973—Trial commenced.

October 9, 1973—Guilty verdict returned.

October 29, 1973—Judgment Entry on sentence.

January 6, 1975—Conviction affirmed by Court of Appeals.

April 25, 1975—Appeal dismissed by Supreme Court of Ohio.

INDICTMENT

(Filed June 7, 1973)

(General Form)

Rev. Code, Sec. 2941.06.

THE STATE OF OHIO,)
) ss. COURT OF COMMON PLEAS
TUSCARAWAS COUNTY,)

Of the Term of April in the Year of Our Lord One Thousand Nine Hundred and Seventy-Three

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that JEFFERSON M. DOYLE on or about the 29th day of April, 1973, at the County of Tuscarawas aforesaid, did unlawfully sell an hallucinogen, to-wit: Cannabis, commonly known as Marijuana, to another person, said sale not being exempted by the provisions of Section 3719.40 to 3719.49, inclusive, of the Revised Code of Ohio, and said sale being contrary to and in violation of Section 3719.44, Sub-Section (D) of the Revised Code of Ohio, and against the peace and dignity of the State of Ohio.

/s/ [Illegible]
Prosecuting Attorney

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The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that RICHARD C. WOOD on or about the 29th day of April, 1973, at the County of Tuscarawas aforesaid, did unlawfully sell an hallucinogen, to-wit: Cannabis, commonly known as Marijuana, to another person, said sale not being exempted by the provisions of Section 3719.40 to 3719.49, inclusive, of the Revised Code of Ohio, and said sale being contrary to and in violation of Section 3719.44, Sub-Section (D) of the Revised Code of Ohio, and against the peace and dignity of the State of Ohio.

/s/ [Illegible]
Prosecuting Attorney

SELECTED SEGMENTS OF THE TRANSCRIPT OF PROCEEDINGS IN THE STATE OF OHIO V. JEFFERSON DOYLE (Case No. 10656) TRIAL:

• • • •

PROSECUTOR'S DIRECT EXAMINATION OF KENNETH BEAMER

[268] Q You gave the "Stop Order" on this vehicle you described?

A Yes Sir.

• • • •

[269] Q What did you do from there?

A Got in my vehicle; came back to the location in which the automobile had been stopped. I got out of my car and at that time seen at that time, inside the car on the passenger side was a Richard C. Wood, who I know and also Jefferson Doyle who I know and apprehended.

Q Were you able to ascertain who was driving the vehicle at that time?

A I don't believe at that time, I knew who was driving.

Q All right,—and what happened from there?

A At that time I placed Mr. Doyle and Mr. Wood under arrest. I told them that they were under arrest for selling of Hallucinogens. I gave them their rights at this time and they were taken to the Tuscarawas County Sheriff's Office to the jail, by Patrolman Hutchison of New Philadelphia Police Department.

Q All right. You gave them their rights. Is that what is known as the "Miranda Warning"?

A Yes Sir. It is.

Q Did you do anything in regard to a Search of their vehicle?

[270] A Yes Sir. I did.

Q Tell the Court and Jury, please, what steps you took?

A BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

BY MR. BEAMER:

A I prepared, with help,—I prepared an Affidavit for a Search Warrant of the 1973 Olds in which Mr. Doyle and Mr. Wood was riding and that at approximately 6:00 A.M. in the morning we searched that vehicle.

Q You say you prepared an Affidavit for a Search Warrant?

A Yes, we did.

Q Were you successful in obtaining a warrant?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

BY MR. BEAMER:

A Yes Sir. I was.

Q Who approved your warrant for you?

BY MR. WILLIS: Objection!

BY THE COURT: Overruled.

BY MR. BEAMER:

A Judge Raymond C. Rice of the Common Pleas Court signed the Affidavit and the Warrant for Search.

Q All right. Was the Warrant then,—well, did you serve the warrant or give the warrant to Mr. Doyle or Mr. Wood?

[271] A I served a copy of the warrant on Mr. Wood and Mr. Doyle.

At this time, they were taken back to the site where the car was stopped and the car at that time, had been blocked. The keys were in Mr. Doyle's possession.

• • • •

[273] Q And you then executed on a warrant?

A Yes Sir.

Q By the way, had you asked Mr. Doyle or Mr. Wood permission to search the car?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

BY MR. BEAMER:

A Prior to getting a warrant. Yes Sir.
Q Did they permit you to search the car?
[274] BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. BEAMER:

A Yes Sir.
Q Prior to getting a warrant?
A They would not allow me to search it. No sir.
Q All right. So you proceeded to get a warrant and execute on it?
A Yes Sir.

* * * *

CROSS EXAMINATION OF RICHARD WOOD

(As a defense witness in the Doyle trial)

[454] Q You hadn't seen any official or police vehicles in the vicinity during this period of time when you were chasing Bonnell to give him his money back?
A No Sir.
Q So here was a complete surprise to you, when you were arrested and that's why you balled the money up and put it under the mat in the right front seat of the car?
A That's why I what, Sir? I beg your Pardon? I didn't understand your question.
Q Well—you did, didn't you,—ball the money up and put it under the mat on the passenger side of the vehicle?
A Yes Sir.
Q Well, did you do that before or after you were arrested?
A Before, Sir.
Q Did you do that before or after you saw the first official police vehicle, recognizable police vehicle?
A Before, Sir.
Q Why would you do that?
A I didn't know what to do with it.

Q What were you guilty of?
A Nothing, Sir.
Q What were you hiding the money for, then? What were you going to do with it?
A I don't know.
Q Are you innocent, or—were you innocent?
[455] A Yes Sir.
Q Why did you hide the money? Did Jeff tell you to hide it?
A No, I don't believe so.
Q Oh,—you decided that on your own?
A Well, it was about that big of a bundle (indicating).
You couldn't stick it in your pocket, so we stuck it under the mat.
Q Didn't know what to do with it. Was Jeff innocent?
A I think he is. Yes.
Q You were, certainly,—according to your testimony, so why hide the money? What were you going to do with it?
A We figured we'd been set up.
Q What did you do with it when the police arrested you?
A I didn't do nothing. It was under the mat.
Q I know. You told the officers that Bill Bonnell had set you up?
BY MR. WILLIS: Objection.
BY THE COURT: Overruled.

BY MR. WOOD:

A No Sir.
Q You didn't tell them?
A No Sir. Not at that time.
Q You didn't tell them that Bill Bonnell had "set you up" or Jefferson Doyle up and you was chasing him around town [456] to give him the money back?
A Not at that time, Sir.
Q What did you tell them then?
BY MR. WILLIS: Objection.

BY MR. CUNNINGHAM: Strike that, please.
Q Remember the Preliminary Hearing in this case?
A Yes Sir. I remember having it.
Q Did you take the witness stand and tell the Judge in that case that you had been set up?
BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. WOOD:

A No Sir.
Q That was before the Preliminary—the Preliminary Hearing was before you were indicted in this case, was it not?
A I don't know. I presume so, Sir.
Q I am going to show you what has been marked as State's Exhibit 4 for identification purposes.
Now, does State's Exhibit #4 look familiar?
A Yes Sir.
Q That's the wad of money under the mat in the right front seat, is it not?
A Yes Sir.
Q Put there by you?
[457] A Yes Sir.
Q I'll show you what has been marked for identification as State's Exhibit 13 and ask you if you recognize what is depicted in that photograph?
A Yes Sir.
Q That your over-night bag?
A Yes Sir.
Q Is that all your money in the bottom?
A Yes Sir.
Q That's the over-night bag that was taken from the vehicle when it was searched by the officers that night?
A Yes.
Q No question about that being your bag?
A No Sir.
Q How about the money?
A No question about that either. It's got my razor and comb and stuff in it.

Q So upon your arrest, you didn't tell anybody you had been "set up" and why you were chasing Bonnell?
BY MR. WILLIS: Objection.
BY THE COURT: You may answer.

BY MR. WOOD:

A No Sir.
Q And you didn't testify in your own defense at the Preliminary Hearing prior to indictment in this case?
[458] A No Sir.
BY MR. WILLIS: Objection.
BY THE COURT: Overruled.

BY MR. CUNNINGHAM:

Q So the first time you testified as to the facts in this case was at your trial?
BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. WOOD:

A Yes Sir.
BY MR. CUNNINGHAM: That's all.

* * * *

CROSS EXAMINATION OF JEFFERSON DOYLE

(testifying in his own defense)

[502] Q All right. So then you proceeded on and were later arrested?
A Yes Sir.
Q Okay. Did you tell Mr. Wood to put the money under the mat?
A I don't recall, Sir, if I did or not. I said some things that night and I don't recall if I told him to put the money under [503] there or not, Sir. I really don't.
Q Anyway, did you see him put it under the mat?
A Yes Sir. I knew the money was under the mat.
Q And when was it put under the mat?
A I believe it was put under the mat, under there,—I'm not sure,—I'm not trying—I'm trying to tell the

truth. I don't know what Mr. Wood,—I'm not trying to deny anything by him,—I thought it was put under there as we were coming up Fair Avenue. I don't know if it was before or after the police car pulled up in front of us. I really don't know.

Q You don't know whether it was before you saw the police car or after you saw the police car?

A No, I don't. I don't know.

Q Does Mr. Wood often put his money under the mat?

A No, but at this time, I think that I was figuring out what was going on. I couldn't understand why Bill was running from me and why he did that.

Q Any way,—you were innocent?

A Yes Sir.

Q And Mr. Wood was innocent?

A Yes Sir.

Q So you hid the money under the mat?

A At that time, we didn't know what else to do.

Q Anyway, you were both innocent?

[504] A Yes Sir.

Q Of anything. You were chasing Bill Bonnell either to have him explain to you what happened or to give him his money back, and you are not sure of that, either?

A I was chasing him to find out what was going on. I didn't know why,—if I didn't know why he put the money in,—I didn't know for sure that he did. I never testified that he did. At that time, I didn't.

Q Anyway, it got there?

A Yes Sir.

He was there beside the window and I was talking to him and looking around. I don't know how it got there.

Q It certainly didn't get there because you sold him Marijuana and he gave you marked money?

A Absolutely not, Sir.

Q All right, so—absolutely not. You are innocent?

A I am innocent. Yes Sir.

Q That's why you told the police department and Kenneth Beamer when they arrived—

BY MR. WILLIS: Objection.

BY MR. CUNNINGHAM:

(continuing)—about your innocence?

BY MR. WILLIS: Objection!

BY THE COURT: Do you understand the question?

[505] BY MR. DOYLE:

A I believe I do, Your Honor. He is asking me if I told them that I was innocent when they arrived. Is that what you are asking me?

I didn't tell them about my innocence. No.

Q You said nothing at all about how you had been set up?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

BY MR. CUNNINGHAM:

Q Did Mr. Wood?

A Not that I recall, Sir.

BY MR. WILLIS: Objection to that. Move the answer be stricken.

BY MR. DOYLE:

A I don't recall him saying anything.

BY THE COURT: It will be overruled.

BY MR. CUNNINGHAM:

Q Were you asked whether or not the officers involved could search your automobile?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

BY MR. DOYLE:

A I don't remember because it wasn't my car at the time, you know.

Q Well, you didn't consent to a search, did you?

[506] A I wasn't asked. I'm sure of that.

Q Did Mr. Wood—Was Mr. Wood?

BY MR. WILLIS: Objection.

BY MR. DOYLE:

A I don't know if he was asked.
BY THE COURT: Objection is overruled.

BY MR. CUNNINGHAM:

Q In any event, a search warrant was obtained?
A Yes Sir.
Q As a matter of fact, if I recall your testimony correctly, you said instead of protesting your innocence, as you do today, you said in response to a question of Mr. Beamer,—"I don't know what you are talking about."
A I believe what I said,—"What's this all about?" If I remember, that's the only thing I said.
Q You testified on direct.
A If I did, then I didn't understand.
Q I was questioning, you know, what it was about. That's what I didn't know. I knew that I was trying to buy, which was wrong, but I didn't know what was going on. I didn't know that Bill Bonnell was trying to frame me, or what-have-you.
Q You were going to buy? Did you have something in the car?
A Beg pardon? Oh,—I didn't have nothing in the car. No.
[507] Q Did you have Marijuana in the car?
BY MR. WILLIS: Objection, Your Honor.

BY MR. DOYLE:

A No, I did not.
BY THE COURT: Overruled.

BY MR. CUNNINGHAM:

Q All right,—But you didn't protest your innocence at that time?
BY MR. WILLIS: Objection.
BY THE COURT: Overruled.

BY MR. DOYLE:

A Not until I knew what was going on.

Q All right. Do you remember the Preliminary Hearing in this case?
A Yes Sir. I remember it.
Q And that was prior to your indictment for this offense, was it not?
A Yes Sir. I believe,—Yes Sir, it was before I was indicted.
Q Arraignment. Is that what you mean?
A Yes. The next day after the arrest.
Q Yes, when evidence was presented and you had the opportunity to hear the testimony of the witnesses against you. Remember that?
A Yes Sir.
[508] Q Mr. Bonnell testified; Captain Griffin testified; Deputy—Chief Deputy White testified?
A Yes Sir.
Q Kenneth Beamer testified?
A Yes Sir.
Q You were there, weren't you?
A Yes Sir.
Q And your lawyer was there,—Mr. James?
A Yes Sir.
Q Tape recording was made of the transcript?
A Yes Sir.
Q Did you protest your innocence at that proceeding?
BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. DOYLE:

A I didn't—everything that was done with that was done with my attorney. My attorney did it.
Q All right. The first time that you gave this version of the fact was in the trial of Richard Wood,—was it not?
BY MR. WILLIS: Objection.
BY THE COURT: Overruled.

BY MR. DOYLE:

A Yes Sir. It was the first time I was asked.

Q All the time, you being innocent?
A Yes Sir.
[509] BY MR. CUNNINGHAM: That is all.
BY MR. WILLIS: Nothing further, Your Honor.

* * * *

PROSECUTOR'S OPENING SUMMATION IN THE DOYLE TRIAL

* * * *

[514] Keep in mind, the classic defense of any criminal law suit [515] is the prosecution, Ladies and Gentlemen, or everybody but the Defendant. Diffuse what the true facts are; obscure the facts and prosecute the prosecution.

A typical and classic defense, but keep in mind, when you are considering the testimony of the law enforcement officers involved, that not until, Ladies and Gentlemen, not until the trial of this case and prior to this case, the trial of Richard Wood's case, that anybody connected with the prosecution in this case had any idea what stories would be told by Jefferson Doyle and Richard Wood. Not the foggiest idea. Both of them told you on the witness stand that neither one of them said a word to the law enforcement officials on the scene—

BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. CUNNINGHAM:

(Continuing) on the scene at the point of their arrest, at the Preliminary Hearing before Indictment in this case. Not a word that they were innocent; that this was their position; that somehow, they had been "set-up".

So, when you evaluate the testimony of the Law Enforcement Officials, consider—

BY MR. WILLIS: Objection!
BY THE COURT: Overruled.

BY MR. CUNNINGHAM:

(Continuing) —what they had to deal with on the night [516] in question and the months subsequent to that.

It is another classic defense strategy to admit all approvable facts that there is a disinterested witness to or, let's say, a Law Enforcement witness, and deny the ultimate facts,—and that is what was done here. They admit being there. They admit talking and seeing Bonnell. Mr. Doyle even admits there was a brown paper bag. Naturally, he denies that he gave it to Mr. Bonnell. He reverses it, because at the time he gave his testimony in this Court in the Richard Wood case, a week ago, he knew exactly whatever witness involved in this case with the law enforcement point of view, the prosecution point of view was going to say.

He very simply fit his testimony to that of what the Law Enforcement witnesses were going to say, or knew they were going to say in this case. Denied the critical facts of Mr. Bonnell's testimony its' not sure about. A classic defense in that sense, as well.

Think about it, Ladies and Gentlemen, when you go to the Jury Room. Would Bill Bonnell,—would Bill Bonnell have, in advance, told and have had narcotics people, arranged to get the money, permitted himself to be staked out? Would he have taken such a chance as try to sell instead of buy, and would he have, when he knew that he was being under surveillance, staked out with narcotics money? [517] Would he have taken such a chance?

Ladies and Gentlemen, in your deliberations, consider it what it is. Unmitigated nonsense. Bill Bonnell has neither the brains nor the guts for all that he is, to pull off such a stunt as that. It simply isn't believable.

So,—evaluate it from the other side. Who is telling you this is the way it was,—that Bill Bonnell was "selling" instead of "buying"?

* * * *

DEFENSE COUNSEL'S CLOSING ARGUMENT [1]

* * * *

[17] Now, they say he didn't protest his innocence, as though that there was some reason why a person who is being arrested should do so. The law says that you don't have to try your case out on the public streets. You don't have to try your case in police stations. You don't have to make explanations anywhere except in court, if you feel it's necessary.

Now,—that's the law. That is absolutely the law. There is no obligation on a citizen to stand out on the street and try to explain something to a police officer. Why should he risk having whatever he said distorted? I am not saying it would be, but why should he risk it? He has to talk to a bunch of police officers and he's out on the street. Why should he stand out there and discuss it with them. When he comes to court, nine chances out of ten, it's going to come out different. The best thing is to get a lawyer.

Beamer said,—and this is significant. Beamer said he advised the man of his rights. He told him he had a right to get an attorney—he had the right of silence, which [18] means he didn't have to say anything whatsoever.

Having exercised the right of silence, that can't be utilized to penalize him in any way. In other words, if I don't want to make any statement at the time; I want to get an attorney and exercise my silence, I can't be penalized for that. You can't be penalized for a man—for exercising the constitutional right. Why give me a right and tell me I have a right to refuse to answer any questions, then penalize me for exercising it? Yet, that's precisely what the Prosecutor is doing here. He is arguing—why didn't they protest their innocence out

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[1] Defense counsel's closing argument is not included in the main Transcript of Proceedings but was transcribed as a supplement thereto. Page reference [17] refers to the supplement captioned "Closing Argument of Mr. James Willis."

there on the street?" Why didn't you tell the police after you heard the Preliminary Hearing?

For what reason?

Any lawyer worth his salt—one of our most famous Justices has said,—"Any lawyer worth his salt will advise his client not to make any statement in any set of circumstances."

If Holmes can say that, I certainly think that we should feel that Mr. Doyle is certainly not as wise as Oliver Wendell Holmes, Jr.

He is not that wise. Here is a man on the Supreme Court thinks that is the way it ought to be handled. If this man comes to the same conclusion, why should we penalize him? Yet, the Prosecutor argued—"Why didn't he protest his innocence"? There is no reason for him to protest his innocence.

Now, if you break your leg, you hire a doctor. [19] If you get into some legal difficulty, you hire a lawyer. Anybody who tries to fix a broken leg himself is a fool, and anyone who gets in legal difficulty and tries to handle it himself is a fool, and even a lawyer,—it has been said, a lawyer who represents himself has a fool for a client, and that's true, and those of us who watch Watergate see these lawyers up here with lawyers; judges with lawyers, so that if you are going to hire a lawyer, it doesn't make sense not to follow his advice. That's the reason you go to him, so that when you had the Preliminary Hearing, the man had legal counsel.

The Prosecutor would penalize him because his lawyer wouldn't let him make some kind of speech there at the Preliminary Hearing.

The upshot of all this is, if he had made a speech, he wouldn't have altered the course. He was going to be indicted anyway, so what's the purpose of the speech?

Again, that is just something, I suppose, to argue about.

* * * *

PROSECUTOR'S CLOSING SUMMATION

[526] On the matter of protesting innocence. The right to remain silent is constitutionally right I think we all agree that it is probably a solid and good right that we all have.

The Fifth Amendment was given to us as a protection against the old futile [feudal] system of star-chambers extracting by force, a confession from a Defendant. We have the Fifth Amendment. I agree with it. It is fundamental to our sense and system of fairness, but if you are innocent—

BY MR. WILLIS: Objection!

THE COURT: Overruled.

BY MR. CUNNINGHAM:

(continuing) —if you are innocent, Ladies and Gentlemen, if you have been framed, if you have been set-on, etc. etc. etc., as we heard in Court these last days, you don't say, when the law enforcement officer says, —"You are under arrest",—you don't say,—"I don't know what you are talking about." You tell the truth. You tell them what happened and you go from there. You don't say,—"I don't know what you are talking about",—and demand to see your lawyer and refuse to permit a search of your vehicle, forcing the law enforcement agents to get a search warrant.

If you're innocent, you just don't do it. [527] Mr. Willis gave a very fine, very eloquent Final Argument, attacking the credibility of each and every one of my witnesses and even me. He justifies this on the basis of he is doing everything for his client. He is trying to demonstrate to you that we have not proved the case, "beyond a reasonable doubt". Talked about everything, Ladies and Gentlemen; talked about every witness, but he didn't talk at all,—he didn't talk at all,—he didn't even mention the money. Marked money. Found under the mat in the passenger side of the Doyle—the Wood vehicle, concealed.

Didn't even mention it, because this is, Ladies and Gentlemen, is all the corroboration, if any is necessary at all,—this is all the corroboration we need. They can't explain the money. So,—if you don't feel that we, representing the State of Ohio, proved our case "beyond a reasonable doubt", it is your duty to acquit this Defendant, but to do so, you are going to have to disbelieve Griffin, White, Beamer, me—

BY MR. WILLIS: Objection.

BY MR. CUNNINGHAM:

Ladies and Gentlemen, please, when you go into your very important deliberations in this case, don't be distracted by this periphery attack; these attacks on the witnesses. Don't be gullible. There is a classic [528] and very master-minded defense, but the facts are here and it is your duty to convict, because Mr. Jefferson Doyle is guilty, and I think we have proved it. Thank you, very much.

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SELECTED SEGMENTS OF THE TRANSCRIPT OF PROCEEDINGS IN THE STATE OF OHIO V. RICHARD WOOD (Case No. 10657) TRIAL:

* * * *

PROSECUTOR'S DIRECT EXAMINATION OF KENNETH BEAMER

[125] A I went back down to Ray Ave. in front of Metz Apartments [126] directly next to the New Philadelphia Post Office. I got out of the car and when I got out of the car, I recognized Mr. Doyle, Jefferson Doyle. I spoke to Jeff. He spoke to me. I looked in the car and recognized Mr. Wood. I said "Hi" to him and he said "Hi" back and I ordered him out of the car, at which time I placed Mr. Wood and Mr. Doyle both under arrest.

Q Did you hand cuff them?

A Yes.

Q Did you search them?
A I padded them down, yes, sir.
Q Read them their rights?
A Yes, sir.
Q What then happened?
A Mr. Wood and Mr. Doyle were taken to the Tuscarawas County jail by Patrolman Hutchinson of the New Philadelphia Police Department.
Q What rights did you read them?
A I told Mr. Wood and Mr. Doyle of the Miranda warning rights—they had the right to remain silent, anything they said could and would be used against them in a court of law, and they had the right to an attorney and didn't have to say anything without an attorney being present and if they couldn't afford one, the court would appoint them one at the proper time.
[127] Q You returned to the Tuscarawas County Sheriff's Department and took Mr. Doyle and Mr. Wood with you?
A Yes.
Q Is this the same Mr. Wood that is in court today?
A Yes, sir.
Q What happened from there?
A We had the car locked and the keys given back to Mr. Doyle I believe, as he was the driver of the vehicle at that time. The car was locked. Police officers were assigned to stay at the car. We went back to the Tuscarawas County jail, at which time I asked Mr. Wood—asked Mr. Doyle if he would consent to a search of the vehicle and he said . .
BY MR. WILLIS: Objection.
BY THE COURT: Sustained.
Q You said the car was locked up, and . .
A The keys given to Mr. Doyle, I believe.
Q Mr. Doyle?
A Yes, sir.
Q And the car was kept . .
A Kept under police guard.
Q By your instructions?
A Yes.

[128] Q So you discussed the matter of the vehicle with Mr. Doyle and Mr. Wood?
A Yes.
Q And you asked them to search the vehicle?
BY MR. WILLIS: Objection.
BY THE COURT: The court might not be exactly clear as to who "them" might be. Put another question.
Q Did you ask Mr. Wood if you could search the vehicle?
BY MR. WILLIS: Objection.
BY THE COURT: Answer yes or no.
A Yes.
Q What was his response?
BY MR. WILLIS: Objection.
BY THE COURT: He may answer.
A He would like to speak with his attorney first.
Q Did he do so?
A Yes, he did.
Q Did you ask the question of Mr. Doyle?
[129] BY MR. WILLIS: Objection.
BY THE COURT: You may answer.
A Yes.
Q What was his response?
BY MR. WILLIS: Objection.
BY THE COURT: Sustained.
Q He did then talk to his lawyer?
A Mr. Wood did, yes, sir.
Q Were you able to obtain his consent to search the vehicle?
BY MR. WILLIS: Objection.
BY THE COURT: Put a handle on "his".
Q Mr. Woods?
BY MR. WILLIS: Objection.
BY THE COURT: You may answer.
A Mr. Wood refused to consent to a search.
Q Did you discuss the vehicle with Mr. Wood?
A Yes.
[130] Q Did you discuss the question of ownership with Mr. Wood?
A Yes.

Q Were you able to ascertain who had leased it?
A Yes.
Q Who was that?
A Mr. Wood stated that he had leased the car.
Q So he would not consent. What did you do next?
BY MR. WILLIS: Objection.
BY THE COURT: You may answer.
A I started to draw up a search warrant—affidavit for a search warrant.

* * * *

DEFENSE COUNSEL'S CROSS EXAMINATION OF KENNETH BEAMER

[169] Q Mr. Beamer, isn't it a fact that you were the one who actually arrested Mr. Doyle and Mr. Wood?
A Yes, sir.

* * * *

CROSS EXAMINATION OF JEFFERSON DOYLE

(testifying as a defense witness in the Wood trial)

[423] Q So it was like the Key Stone Cops—you chasing Bonnell trying to get him to give his money back and Mr. Wood in the front seat looking at it and counting it?
A Not the way you are saying it.
Q How was it?
A The way it was I was trying to catch Mr. Bonnell to find out what the idea is.
Q You dirty dog I am going to give you your big pile of money back?
A I wanted to know why. What would you do?
Q Maybe it was because Mr. Wood counted the money and found out you guys got ripped off $400.00 that you were looking for Bonnell?
A I don't understand the question.
Q If the deal was to go down for $1750—$175.00 a pound, that is what you discussed?
A I said I was trying to buy for $100.00.

Q You mentioned $175.00 a pound?
A Yes.
Q Ten pounds.
A To buy one pound it was $175.00. Take them all you can have them for $100.00 a pound. That is what the deal was.
Q What is ten times 175?
A $1750.00.
[424] Q $1750.00?
A Yes. $175.00 if he would sell one pound. He said $1,000 he said $1200 and might come down to $1,000.
Q If he was talking about $1,000 why did he throw $1300 in the car?
A I don't know. That is why I was chasing him.
Q To give the money back?
A No, to find out what was going on.
Q Not because you were mad because he was guilty of breach of contract?
A No contract.
Q The deal 10 pounds for $175.00 a pound for $1750.00 and you only got $1320?
A No money for nothing. I don't know whose money it was until we was pulled over by your police officers.
Q You got pulled over by police officers?
A Yes.
Q Who put the money under the mat?
A I believe Mr. Wood did.
Q Why didn't he tell them about Mr. Bonnell?
A Because we didn't know what was going on and wanted to find out.
Q So he hid the money under the mat?
A The police officers said they stopped us for a red light. I wanted to get my hands on Bill Bonnell.
[425] Q It wasn't because you were guilty, was it?
A Because I wanted to get my hands on Bill Bonnell because I suspected he was trying. .
Q Why didn't you tell the police that Bill Bonnell just set you up?
A Because I would rather have my own hands on him.

BY MR. WILLIS: Object to the prosecutor's question.
BY THE COURT: Overruled, but I don't think we have to get so loud.
Q So any way, when the police got there the money was under the mat and the car doors locked?
A When the police got there we were both sitting in the car. I rolled down the window and talked to the police officer and he told me I ran a red light.
Q When Mr. Beamer arrived?
A Mr. Beamer said—I can't remember if I got out of the car or not before Mr. Beamer got there. I can't remember. I am trying to but I can't, but when Mr. Beamer got there I said to Mr. Beamer what the hell is all this about and he said you are under arrest for the suspicion of selling marijuana and I said you got to be crazy. I was pretty upset.
Q You didn't find it in your heart to tell Mr. Beamer what you said today?
[426] BY MR. WILLIS: Object to the question and further ask the court to withdraw a juror and declare a mis-trial.
BY THE COURT: Motion overruled. The witness is entitled to have the question re-read and answer it.

(Question re-read)

A I don't understand the question.
BY THE COURT: Please put another question.
Q All right, Jeff. You come to court today?
A Yes.
Q With testimony?
A Yes.
Q And correct me, if I am wrong. You are also under indictment for this offense?
BY MR. WILLIS: Objection.
BY THE COURT: Overruled.
A Yes, sir.
Q And so it is fair to say you have an interest in this cause?
A Yes, sir, I feel I am being framed. I know I am and am pretty upset.

Q So on the night of April 29 you felt that you were being framed [427] like you are being framed today?
A I was so confused that night, the night of the arrest.
Q How about Mr. Wood?
A Mr. Wood didn't know what was going on.
Q He was cool enough of mind to insert a large amount of money under a mat in the right front seat?
A I think that you are right, sir. I think when we were pulled over it was a big wad of money.
Q It is in the picture. Does it look familiar?
A He had the wad of money and he put it under the front seat.
Q Who gathered it up off the back seat?
A Mr. Wood did. I was driving the car.
Q Got it together and wadded it up and inserted it under the right front seat mat?
BY MR. WILLIS: Objection.
BY THE COURT: He may answer.
A I think he at the time said what do I do with this? I didn't know what to do with it. I was shocked.
Q Mad?
A I wanted to know what was going on. What would you do?
Q Let me ask the questions, Jeff. Are you as mad and upset today as you were that night?
A I can't answer that question.
[428] Q Did you feel the same way about what happened to you?
A That night I felt like I couldn't believe what was happening.
Q You didn't like being framed?
A That is right. I didn't like some one putting me in a spot like that.
Q Didn't it occur to you to try to protect yourself?
A Yes, at this time I felt like I wasn't talking to nobody but John James who was the attorney at that time.
Q But you felt. . .
A The man walked up and didn't ask me anything.

Q You didn't talk to a soul about how rotten it was because you were framed?

BY MR. WILLIS: Objection.

BY THE COURT: He can answer. If he made that statement.

A I will answer the question, sir, the best I can. I didn't know what to say. I was stunned about what was going on and I was asked questions and I answered the questions as simply as I could because I didn't have nobody there to help me answer the questions.

Q Wouldn't that have been a marvelous time to protest your innocence?

BY MR. WILLIS: Objection.

[429] BY THE COURT: You may answer yes or no.

A I don't know if it would or not.

Q Do you remember having a conversation with Kenneth Beamer?

A Yes, sir.

Q What was said?

BY MR. WILLIS: Objection.

BY THE COURT: He may answer.

A Kenneth Beamer said I want to know where you stash—where your hide out is, where you are keeping the dope and I said I don't know what you are talking about. I believe the question was asked in front of you.

Q Where did this conversation take place?

A Took place during the search.

Q Did you have any other conversation with Kenneth Beamer?

BY MR. WILLIS: Objection.

BY THE COURT: Sustained. Get more specific.

Q So any way you didn't tell anyone how angry you were that night?

BY MR. WILLIS: Objection.

[430] BY THE COURT: He may answer.

A I was very angry.

Q But you didn't tell anyone?

A That is right. If I started I don't know where I would have stopped. I was upset.

Q I can understand that, Jeff.

A Thank you.

Q You conversed about this case since that time with your lawyer?

A With my attorneys, yes.

Q And naturally you were present at the preliminary hearing in this case?

A Yes, sir.

Q Remember that is the probable cause hearing?

A Yes, sir.

Q And you heard the testimony of all the witnesses in that case against you?

A Yes, sir.

Q And your attorney was able to secure a verbatum transcript of the tape recording of all the witnesses that testified against you in that case?

A So.

Q So did you listen to those tapes?

A I listened to parts of them, yes, sir. I have a gadget tape [431] recorder of my own.

Q You were permitted to listen to all?

A I asked to listen to them.

Q After you listened to all the tapes you knew exactly what the witnesses would say against you?

A I didn't listen to them—I could remember what was said.

Q You were there and heard what was said and you had the tapes to review as to what they said?

A Yes, sir.

Q So after you had the opportunity to hear this testimony against you and these tapes is the first time we, representing the State of Ohio, have ever heard what you had to say about what happened that night.

BY MR. WILLIS: Objection.

BY THE COURT: Sustained.

BY THE PROSECUTOR: No further questions.

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CROSS EXAMINATION OF RICHARD WOOD

(Testifying in his own defense)

[465] Q So you whipped around the block a couple times and got stopped by the New Philadelphia policemen?

A Yes.

Q Is that the time you took the bills and shoved them under the mat?

A I think I shoved them under before.

Q Which of you locked the doors?

A I don't recall.

Q They got locked, didn't they?

A I think Mr. Beamer locked them, if I recall right.

Q Mr. Beamer did arrive on the scene?

A Yes, he did.

Q And I assume you told him all about what happened to you?

BY MR. WILLIS: Objection.

BY THE COURT: What is the reason for the objection?

BY MR. WILLIS: He is not required to tell Mr. Beamer anything.

BY THE COURT: He may answer.

A No.

Q You didn't tell Mr. Beamer?

BY MR. WILLIS: [466] Objection.

BY THE COURT: Overruled.

A No.

Q You didn't tell Mr. Beamer this guy put $1300 in your car?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A No, sir.

Q And we can't understand any reason why anyone would put money in your car and you were chasing him around town and trying to give it back?

BY MR. WILLIS: Objection.

BY THE COURT: You may answer.

A I didn't understand that.

Q You mean you didn't tell him that?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A Tell him what?

[467] BY THE COURT: Ask the question again.

Q Jefferson Doyle said he was confused, angry and upset. Were you confused, angry and upset?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A Upset and confused.

Q Why were you upset?

A Because I didn't know what was going on most of the time.

Q Why would you be upset? Because you found $1300 in your back seat?

A Mainly because the person that was in the car Jeff was upset and confused and angry and. .

Q What has that to do with you?

A I am in the car. That is what it has to do with me.

Q You didn't witness anything that went on between Mr. Bonnell and Mr. Doyle, did you?

A No, but you don't find a bunch of money laying on the back seat for nothing.

Q And you had not participated in this transaction, had you?

A No.

[468] Q Yet you are the one that gathered the money up?

A Can't drive a car and get in the back seat at the same time.

Q And you are the one who decided it should be inserted under the mat?

A We were stopped by policemen.

Q What are you so confused and upset about?

A Involved in something.

Q But you don't know what it is about, correct?

A Primarily, yes.

Q You are as pure as the driven snow, is that correct?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A What do you mean?

Q You are innocent?

A Yes.

Q Of anything?

A I don't know about anything.

Q This particular incident, you were placed under arrest, weren't you?

A Yes, innocent of this incident.

Q Innocent of the entire transaction?

A Yes, sir.

[469] Q Or even any knowledge of the entire transaction?

A Up to a point, sir.

Q Yet you have knowledge to gather the money, count it, wad it up and insert it under the front seat of the Cutlas car?

A Yes, sir.

Q Mr. Wood, if that is all you had to do with this and you are innocent, when Mr. Beamer arrived on the scene why did't you tell him?

BY MR. WILLIS: Objection.

BY THE COURT: You may answer.

A Mr. Cunningham, in the last eight months to a year there has been so many implications, etc. in the paper and law enforcement that are setting people up and busting them for narcotics and stuff.

Q That is interesting. What did narcotics have to do with the money in the back seat?

A I was under the impression . .

Q Where did you get your impression?

A After the money was in the car.

Q Jeff started telling you the whole thing?

A No, something about being set up.

Q It wouldn't be that you know considerably more about this than [470] you are admitting to?

A Not really.

Q It wouldn't be the reason you rode to Denver with Mr. Bonnell so you could keep an eye on Mr. Bonnell so Mr. Doyle could go and pick up ten pounds of marijuana?

A No.

Q Of course not?

A No.

Q But in any event you didn't bother to tell Mr. Beamer anything about this?

A No, sir.

Q As a matter of fact you never told anyone that you had been set up until today?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A Yes, I believe I did, sir.

Q I assume you discussed it with your lawyer?

A Yes, I discussed it with my lawyer.

Q And you heard the testimony and witnesses against you?

A Yes, sir.

Q And were you aware Mr. James was able to obtain a tape transcript of the proceedings?

A Yes.

[471] Q And you no doubt listened to those?

A Parts and portions of them—some of it.

Q But you never communicated your innocence?

A I believe I did one time to Mr. Beamer.

Q When might that have been?

A When in the jail house.

Q So you protested your innocence?

A In a little room. I believe he asked us how do you let people get away with people setting up friends like this. He said Bill Bonnell is not your friend and I said no, but I figured he was a good enough acquaintance he would do that.

Q Where was that?

A Little room there.

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DIRECT EXAMINATION OF KENNETH BEAMER
AS A REBUTTAL WITNESS

[488] BY THE COURT: Now ladies and gentlemen of the jury, there has been a question put to this witness relative to a conversation between this witness and another witness, Jefferson Doyle, after the arrest of the witness, Jefferson Doyle. The court is going to permit the witness to testify as to a conversation. This testimony will be given to you for one purpose and one purpose only and that will go toward the impeachment of the testimony of Jefferson Doyle. It will not go, and you may not consider it relative to the innocence or guilt of this defendant. With that stipulation you may testify.

BY MR. WILLIS: Objection.

BY THE COURT: You may answer.

A I stated to Mr. Doyle on the way back, I said, Jeff, what are you doing in the dope business, and he said, I don't know, Kenny. I don't know. I stated that I heard there may be more out on Route 39 in a ditch or culvert. .

BY MR. WILLIS: Objection.

BY THE COURT: He may testify for the limited purpose.

[489] A (Cont) I said if you have more, Jeff, I want it—I want it all. He said there isn't any more. That is all we had with us.

BY THE COURT: As to that conversation, the court will permit the defendant to have a continuing objection as to the statements that have just been made by this witness. That is for the purpose of the record.

Q So it is fair to say, is it not, Mr. Beamer, that he didn't protest his innocence?

BY MR. WILLIS: Objection.

BY THE COURT: He may answer.

A That is correct, sir.

Q All right, now, referring your attention specifically to Richard Wood, to this defendant, did you have any conversation with the defendant Richard Wood?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A Yes.

Q And did the defendant, Richard Wood, the defendant in this case—first of all, back up. When exactly did you have a conversation, if any, with the defendant, Richard C. [490] Wood?

A The first I spoke to him was when I arrived at the scene where the New Philedalphia police officers had Mr. Doyle and Mr. Wood stopped. Just merely spoke and placed him under arrest and gave his his rights.

Q Did he say anything to you?

A Just "hi" and that is it. No conversation on his part.

Q He was then taken to the Tuscarawas County Jail?

A Yes.

BY MR. WILLIS: May I have an objection to this line of questioning?

BY THE COURT: I would prefer as it relates to defendant, you object each time you feel it is necessary.

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

Q And Kenny, did you have an opportunity to have any conversation with the defendant, Richard Wood, at that time and place?

A Yes, sir.

Q When was that?

A Just moments after we all arrived at the Tuscarawas County Jail.

[491] Q Advise us what the nature or circumstances of that conversation was.

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A I asked Mr. Woods if he rented the Oldsmobile that we had stopped.

Q What did he reply?

BY MR. WOODS: Objection.

A He replied "yes".

BY THE COURT: It may remain.

Q And did you have any other or subsequent conversations with Mr. Woods?

A Yes, sir.

Q Please enlighten us as to when it was.

BY MR. WILLIS: Objection.

BY THE COURT: He may answer.

A At the same time I asked Mr. Wood. .

BY THE COURT: He asked you when or if you had any further conversations.

[492] A Yes.

Q At the same time?

A Yes.

Q What was the nature or circumstances of that conversation?

A I asked Mr. Wood if he would sign a consent to search his vehicle.

BY MR. WILLIS: Object and move the answer be stricken and the jury instructed to disregard it.

BY THE COURT: Now I think this witness has testified to that—that permission was not given.

BY MR. WILLIS: I asked that the jury be instructed that no person is required to give consent and no inference can be drawn from that.

BY THE COURT: The court will instruct the jury that consent was not given nor is there any responsibility that consent should be given under the factual set up in this case.

Q At any time, Mr. Beamer, did Mr. Richard C. Wood protest his innocence to you?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled. You may answer yes or no.

[493] A No, sir.

Q Kenny, at any time did Mr. Wood indicate to you that he had or felt he was framed or set up?

BY MR. WILLIS: Objection.

BY THE COURT: Overruled.

A No, sir.

Q Would it surprise you if you heard him testify that he told us that?

BY MR. WILLIS: Objection.

BY THE COURT: Sustained the objection. This witness testified as to a conversation. You are asking for an emotional response and I will sustain the objection on that ground.

Q At any time after the time he was placed under arrest thru the period of the subsequent investigation that morning did Mr. Richard C. Wood tell you that he was innocent—that he had been set up or framed, or both?

BY MR. WILLIS: Objection.

BY THE COURT: He already answered the question.

[494] BY THE PROSECUTOR: Not for that entire period of time.

BY THE COURT: You may answer yes or no.

A No, sir, he did not.

Q Did you have any conversation with him subsequent to the time that he refused to sign the consent to search—you already testified about the search warrant that he would not consent.

BY MR. WILLIS: Objection.

BY THE COURT: We have been over it. This witness said he did not have such a conversation with the defendant and I see no need to go over it.

BY THE PROSECUTOR: That is all I have.

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DEFENSE COUNSEL'S CLOSING ARGUMENT[2]

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[15] If Mr. Doyle dealt with Bonnell now wasn't the time to resolve it. What was his motive. He knew Bonnell and knew where he lived. He called him on the

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[2] Defense counsel's closing argument is not included in the main Transcript of Proceedings, but was transcribed as a supplement thereto. Page reference [15] refers to the supplement captioned "Closing Argument of Mr. Willis."

telephone. He wouldn't be difficult to find. Doyle didn't have the marijuana now—we know that. Then they are arrested. What happens then? They are told that they have a right to an attorney. Anything wrong with that? Here we all have a right to an attorney. So when he is told he has a right to an attorney and he says he wants to exercise that right. Is there anything wrong with that. [16] When you tell a man he has a right to an attorney and he says he wants to exercise that right, is that wrong? Are they to be penalized because they don't protest their innocence at the point of arrest? Can he reserve his defense for the court? If there is to be a vocal accusation is he to be penalized because he don't protest his innocence to the police. Isn't he better off not saying anything until he gets legal advice?

I think that is sound advice any lawyer can give. You are better off with legal advice than without it. The prosecutor would penalize this man because he didn't protest his innocence. He didn't have to do that. Everybody has the right to reserve his defense for presentation in the court room and he can't be penalized because he didn't try his case in the police station.

So what happened? He wanted to get in touch with his lawyer and he did so. Any lawyer worth his salt would advise the client not to make any statement under any circumstances.

* * * *

PROSECUTOR'S CLOSING SUMMATION IN THE WOOD TRIAL.[3]

[12] The defense in this case was very careful to make no statements [13] at all until they had the benefit of hearing all the evidence against them and had time to ascertain what they would admit and what they would deny and how they could fit their version of the story with

[3] The prosecutor's closing summation may be found in the supplement to the main Transcript of Proceedings, captioned "Closing Argument of the Prosecutor."

the state's case. During none of this time did we ever hear any business about a set up or frame or anything else. All right.

Yes, it is the law of our land, and rightfully so, ladies and gentlemen, that nobody must be compelled to incriminate themselves. It is the 5th Amendment. No one can be forced to give testimony against themselves where criminal action charges are pending. It is a very fundamental right and I am glad we have it.

The idea was nobody can convict himself out of his own mouth and it grew out of the days when they used to whip and beat and extract statements from the defendants and get them to convict themselves out of their own mouth, and I am glad we have that right.

But ladies and gentlemen, there is one statement I am going to make. If you are innocent, if you are innocent, if you have been framed, if you have been set up as claimed in this case, when do you tell it? When do you tell the policeman that?

BY MR. WILLIS: Objection.

BY THE COURT: He may ask the question. It is something for the jury.

BY MR. CUNNINGHAM: Think about it. After months—after various proceedings and for the first time? I am not going to say any more about that but I want you [14] to think about it. So once again, once again, please, when you consider this case, think about the facts in this case and don't be distracted by personalities, or attacks on me, Beamer, or anyone else. Think about the case. Think about it in its prospective.

One more thing. It is a big case—big case. This is a big case. This is being smoked at Ohio University—Ohio State campus, Kent, etc. What is this all about.

I'll tell you what it about, ladies and gentlemen. Smoking a cigarette and I don't want to comment on it, but this is not about smoking a cigarette. Call it big or small relative to what goes on somewhere else. What we are talking about is money. Lots of it. Cash. Big business—big profits and it is against the law because

it is a drug—it is a narcotic and we don't want it in our county. I don't want the likes of Mr. Doyle and the likes of Mr. Woods selling big quantities of marijuana to our kids. We don't want them to profit at the expense of this county and people in this county. So don't tell me what they do at Ohio State or what they do at Kent or what they do at Muskingum. I especially don't like it when they come in and make big money on it.

Convict them because they are guilty, ladies and gentlemen. Thank you.

* * * *

No. 10657

STATE OF OHIO

vs.

RICHARD WOOD

Tuscarawas County, Ohio

TRIAL COURT'S RULING ON MOTION FOR JUDGMENT OF ACQUITTAL

BY THE COURT: There is filed with this court a motion containing two branches—first that of a Motion for a New Trial and a motion for a Judgment of Acquittal.

After hearing the arguments of counsel, maybe it would be wise for the court to say he too sat thru this trial and it is amazing how opinions can differ. But the record must stand as it is and we will all have to live with it.

In the motion for a New Trial, the first point raised by the defendant was that the court erred in denying the pretrial motion to suppress illegally seized evidence.

The second branch is tied into the first branch following up by the fact that if it was illegally seized, the records of seizure cannot be used in court. This matter was argued before Judge Rice and the court does not have the benefit of those arguments, however this court will stand upon the ruling that was handed down on the issue of whether or not it was illegally seized evidence as ruled on by Judge Rice and since his ruling was that the evidence was legally seized, this court will overrule Branch 1 and 2 as it relates to the motion for a New Trial.

The Third Branch goes to the court erred in admitting certain hearsay and other incompetent evidence. The court has reviewed its records and the court is without benefit of argument, on this particular point, and the

court will stand upon the record and overrule Branch 3 of the motion for a New Trial.

As to Branch 4, the court erred in admitting testimony of State's witnesses, Bonnell and Beemer, tending to show Bonnell was sought by a hit man—that is a hired killer. The court feels there was no prejudicial error in allowing that testimony to go into the record.

As to Branch 5, the court erred in restricting defense cross examination of several prosecution witnesses. The court is of the opinion that each of the witnesses presented by the State of Ohio were thoroughly and skillfully cross examined by Attorney Willis and the court feels that branch should and will be overruled.

The court erred in permitting the State, under the guise of refreshing the witness Griffin's recollection to show a significant segment of an unsigned written report made by another and different officer. The court has thought about this branch. As the court recalls, there was a request on behalf of the defendant to play back tape which represented the record in the county court where the preliminary hearing was held to show the statements of the Witness Griffin. The state did present a paper which was marked but the same was denied by the court to go to the jury and the court feels that the witness Griffin was thoroughly interrogated and that his testimony was shown both in the record at the preliminary hearing and as he testified at this trial and the court is hard pressed really to see where the defendant has been prejudiced in any way thru the testimony of Mr. Griffin. Branch 6 will be overruled.

Branch 7 goes to the heart of one of the arguments of the defendant and that is the interrogation of Witness Doyle relative to his failure to protest his innocence at the time of the arrest or thereafter. The court will reserve ruling on No. 7 at this time.

Now we will go to No. 8. The court erred in permitting the prosecution to develop through the testimony the witness Doyle, and the defendant, that they refused to consent to the search of the car. The basis upon which the search was made or a search warrant secured are

matters that have to be explained and settled before the trial and it was done in this case and as it ought to be. The court feels it was incumbent on the State of Ohio to get some evidence out here relative to the fact that a search was necessary and the court doesn't feel that the defendant was prejudiced. The court felt there might have been a further explanation of that and I think it was handled with as meager testimony as possible in order to establish points which the State had to substantiate.

Branch 9—the court erred in permitting the prosecution to develop, through his cross examination of the defendant, that he did not protest his innocence upon being arrested. This, of course, is tied in directly to the same ground as listed in No. 7 and the court will defer ruling on that at this time.

Branch 10—The prosecutor was guilty of misconduct in arguing to the jury that the failure of the witness Doyle, and the defendant, to protest their innocence, or to otherwise disclose their defense, earlier than at the trial, and that their failure to consent to a search of the vehicle, were circumstances that could be weighed arriving at a verdict in this case. The court will reserve ruling on this at this time as in Branch 7 and 9.

Branch 11—the court erred in permitting the witness Beemer to testify on rebuttal without a proper foundation that the witness Doyle admitted to him they had brought the contraband involved in this case into the county. The jury was instructed as to the limited purpose for which this testimony was received and I believe that they did follow the instructions of the court. I think it is further amplified by the fact that the jury spent some four hours in arriving at a decision in this case. I think it points up to the fact the jury was responsible. The court is of the opinion that the prosecutor testified that he did not have knowledge of the statement that Mr. Beemer made in this trial until shortly before he made it. Therefore the Court will overrule Branch 11 but I will say this—that if the court had any evidence there was prior knowledge by the State of this statement then the

court would have felt it was a prime issue and overruled or granted a motion for a new trial on this issue alone.

As to Branch 12—the court erred in failing to give, or appropriately incorporate into its general charge, the special request submitted by the defendant. It is a matter of record now that the requests were denied for special instruction, primarily upon the ruling of the court that these instructions were incorporated in with the general charge. We will leave the decision of whether or not the court erred to another day and another court and the court will overrule Branch 12 of the motion for a New Trial.

As to Branch 13, again Mr. Willis as intelligent and competent defense counsel, puts this in. I don't feel it was needed for an appeal in the event he decides to take an appeal. The court will overrule that branch as of this time.

As to Branch 14—the verdict of the jury is against the manifest weight of the evidence and is contrary to law. This is a general complaint which again a good and conscientious counsel will put in their motion for a new trial and the court having sat in the case, feels that branch should be overruled.

Now going back to Branch 7, 10 and 9, now there is a definite difference of opinion here as to what the evidence was between the prosecuting attorney and counsel for the defendant. What we have in this case is the State of Ohio versus Richard Wood and there is a case State of Ohio versus Jefferson Doyle. Jefferson Doyle came into this court as a witness. Therefore there are different rules that apply to a witness than to a defendant. Now upon this issue of statements by Mr. Beamer made in this court relative to statements made to him by Jefferson Doyle, the court has specifically instructed the jury relative as to what purposes and how it should be received. The court believes that the question was never put to Mr. Wood about his protest of innocence but the court does believe that this question was put to Mr. Doyle. There is a difference or at least there is in the court's mind. The court believes that the jury

was properly instructed upon the receipt of this particular bit of evidence.

Now Branch 9 again goes to the cross examination of the defendant. Again the court does not agree with the contention that the defendant was inquired about his protest of innocence in this matter. This was brought up to the attention of Doyle.

As to the argument to the jury, again the court believes that the argument of the State relates to the acts and actions of Doyle directly and without direct reference to the defendant. I am sure Mr. Willis will disagree with that but in looking over all of the issues here sometimes we get so technical that we lose sight of what we are here to do. The court feels that the most important thing in any trial is to get at the truth of the matters and to see that the defendant has a fair trial. The court believes that Mr. Wood did receive a fair trial, was adequately and properly represented by counsel and that the issues were brought before the jury clearly, giving rise for the jury to spend "X" number of hours in deliberating and finally coming back with their verdict, so the motion for a new trial will be overruled in its entirety.

Now we go to Branch 15 which the court is going to consider separately because I think it must—that is the Judgment of acquittal. No. 15 reads very simply but forcibly—there is insufficient evidence as a matter of law to support the verdict in this case.

The court will overrule this motion for judgment of acquittal. The jury spent hours and we will let it stand as it is.

Now the court will grant exceptions to the defendant herein. I don't think you need them, but I will grant them anyway.

Now we will get to the next proposition and that is simply this. That at the time the verdict was returned in this case the court set the date of October 29 for sentencing in this matter.

(Defendant sentenced)

IN THE COURT OF COMMON PLEAS OF
TUSCARAWAS COUNTY, OHIO
STATE OF OHIO v. JEFFERSON DOYLE

CASE NO. 10656

JUDGMENT ENTRY ON VERDICT AND SENTENCING

(Filed October 16, 1973)

On the 10th day of October, 1973, this cause came on for trial by Jury and the defendant was present in Court throughout said trial, represented by his Attorneys, James Willis of Cleveland, Ohio, and John James of Akron, Ohio. Prosecuting Attorney Arthur B. Cunningham represented the State of Ohio. Said trial began on the 10th day of October, 1973, and continued through the 15th day of October, 1973.

The Jury, having been duly impaneled and sworn, and having heard the opening remarks of the Prosecuting Attorney for the State of Ohio, and those of Attorney Willis, counsel for the Defendant, the testimony and evidence adduced and submitted by the parties hereto, including exhibits, the arguments of the Prosecuting Attorney and counsel for the defendant, and the charge of the Court, and after due deliberation thereon, finds that said defendant, Jefferson M. Doyle, is guilty of sale of an hallucinogen, as set forth in the Indictment filed against him.

The Court thereupon inquired of either party if there was a request that the Jury be polled as to its verdict, and the defendant having requested that the Jury be polled, each of said jurors was polled as to whether or not this was his or her verdict and said verdict was thereupon confirmed. It is so ordered.

The matter then came on for sentencing. Whereupon the Court inquired of the defendant whether or not he had anything to say why judgment should not be pronounced against him and the defendant having nothing further to say than what he had already said, and the

Court having heard the remarks of the Prosecuting Attorney and those of counsel for the defendant, did then and does hereby Order, Adjudge and Decree that the Defendant be sentenced to the Ohio State Penitentiary for a period of not less than twenty nor more than forty (20-40) years, and to remain incarcerated therein until pardoned, paroled or otherwise released according to law.

It is further ordered that the defendant pay the costs herein, taxed at $_____.

It is furthered ordered that a warrant be issued to the Sheriff of this County to convey said defendant to the Ohio State Penitentiary, as provided by law, and that the defendant is hereby remanded to the custody of the Sheriff in accordance with the terms hereof.

_____

/s/ Raymond C. Rice
Judge, Common Pleas Court

IN THE COURT OF COMMON PLEAS OF
TUSCARAWAS COUNTY, OHIO
STATE OF OHIO v. RICHARD WOOD

CASE NO. 10657

JUDGMENT ENTRY ON VERDICT

(Filed October 18, 1973)

On the 2nd day of October, 1973, this cause came on for trial by Jury and the defendant was present in Court throughout said trial, represented by his Attorneys, James Willis of Cleveland, Ohio, and John James of Akron, Ohio. Prosecuting Attorney Arthur B. Cunningham and Assistant Prosecuting Attorney James C. Shaw represented the State of Ohio. Said trial began on the 2nd day of October, 1973, and continued through the 9th day of October, 1973.

The Jury, having been duly impaneled and sworn, and having heard the opening remarks of the Prosecuting Attorney for the State of Ohio, and those of Attorney Willis, counsel for the Defendant, the testimony and evidence adduced and submitted by the parties hereto, including exhibits, the arguments of the Prosecuting Attorney and counsel for the defendant, and the charge of the court and after due deliberation thereon, finds that said defendant, Richard C. Wood, is guilty of sale of an hallucinogen, as set forth in the Indictment filed against him.

The Court thereupon inquired of either party if there was a request that the Jury be polled as to its verdict, and the defendant having requested that the jury be polled, each of said jurors was polled as to whether or not this was his or her verdict and said verdict was thereupon confirmed. It is so ordered.

It is further ordered that the bond of the defendant be continued and this matter is continued for sentencing on October 29, 1973, at 11:00 A.M.

/s/ HARLAN R. SPIES
Judge, Common Pleas Court

JUDGMENT ENTRY ON SENTENCE

(Filed October 30, 1973)

On the 29th day of October, 1973, this matter came on for hearing in open Court on motions filed for a New Trial or Judgment of Acquittal, by the defendant, and sentencing. The defendant, Richard C. Wood, was present in Court represented by his attorneys, James Willis of Cleveland, Ohio, and John James of Akron, Ohio. The State of Ohio was represented by Prosecuting Attorney Arthur B. Cunningham.

Whereupon the Court, having heard the arguments of counsel for the defendant and those of the Prosecuting Attorney for the State of Ohio, finds the defendant's Alternative Motion for a New Trial or For a Judgment of Acquittal not well taken and the same is hereby overruled.

Thereupon this matter came on for sentencing. The Court heard the statements made by the Prosecuting Attorney on behalf of the State of Ohio, and also the statements of counsel for the defendant, and the Court having personally inquired of the defendant whether or not he wished to make a further statement on his own behalf or present any additional information in mitigation of punishment, and the defendant having personally addressed the Court, the Court did then, and does hereby order, adjudge and decree that the defendant, Richard C. Wood, be sentenced to the Ohio State Penitentiary for an indeterminate period of not less than twenty (20) nor more than forty (40) years, there to remain until pardoned, paroled or otherwise released according to law.

The defendant's Application for Bail Pending Appeal is denied, and the defendant is remanded to the custody of the Tuscarawas County Sheriff.

It is further ordered that the defendant pay the costs herein taxed at ————————————, and that a warrant be issued to the Sheriff of this County to convey said defendant to the Ohio State Penitentiary.

/s/ HARLAN R. SPIES
Judge, Court of Common Pleas

IN THE COURT OF APPEALS, FIFTH DISTRICT
TUSCARAWAS COUNTY

Case No. CA 1108

Decided ————————————

[Filed Court of Appeals Jan. 6, 1975, Tuscarawas County, Ohio, Robert E. Moore, Clerk]

JUDGES:

Hon. Norman Putman, P.J.
Hon. Leland Rutherford, J.
Hon. Paul Van Nostran, J.

STATE OF OHIO, PLAINTIFF-APPELLEE

vs.

JEFFERSON DOYLE, DEFENDANT-APPELLANT

MEMO

APPEARANCES:

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Counsel for Plaintiff-Appellee

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PUTNAM, P.J.

This is an appeal in a criminal action from a sentence for illegal sale of marijuana in violation of R.C. 3719.44

(D). Appellant was jointly indicted with Richard Wood but tried separately. Wood's appeal is our separate case number 1109.

Twelve errors are assigned as follows:

1. The court erred in denying the appellant the opportunity to show that certain electors were improperly excluded in connection with jury service.
2. The court erred in failing to grant a change of venue.
3. The court erred in restricting the cross examination of the witness Bonnell as to his possible drug addiction.
4. The court erred in permitting the State, under the guise of refreshing the witness Griffin's recollection, to show a significant segment of an unsigned written report made by another and different officer.
5. The court erred in permitting the prosecution to interrogate the witness Wood in a manner suggesting his (—i.e., Wood's) failure to disclose the substance of his testimony, or to otherwise "protest his innocence", at the time of his arrest was a factor that could properly be considered by the jury in determining his credibility as a witness.
6. The court erred in permitting the prosecution to develop through the testimony of both the witness Wood and the appellant, that they refused to consent to the search of the car.
7. The court erred in permitting the prosecution to develop, through the cross examination of the appellant, that he did not "protest his innocence" upon being arrested.
8. The prosecutor was guilty of misconduct in arguing to the jury that the failure of the appellant to protest his innocence, or to otherwise disclose his defense earlier than at the trial of Richard Wood, and that his failure to consent to a search of the vehicle, were circumstances that could be weighed arriving at a verdict in this case.

9. The court erred in failing to give, or appropriately incorporate into its general charge, the special requests submitted by the appellant.
10. The court erred in denying the various motions (including, but not limited to the motion for judgment of acquittal) made at the close of all the evidence.
11. The verdict of the jury as against the manifest weight of the evidence and is contrary to law.
12. The prosecutor was guilty of misconduct in arguing to the jury his personal opinion as to the guilt of the appellant.

We find the State's evidence, if believed, was sufficient to show beyond a reasonable doubt the following as set forth in appellee's brief:

In April of 1973, William Bonnell, an informant of the Multi-County Narco Bureau and a convicted mine rioter free on bond pending various appeals, made contact with a man by the name of Vincent Cercone, who told Bonnell he could set up or help set up a transaction for a large quantity of marijuana (as it turned out, 10 pounds). On the evening of the 28th of April, 1973, Mr. Bonnell got a telephone call from Jefferson M. Doyle proposing to sell Bonnell 10 pounds of marijuana for $175 a pound, or a total of $1750. Arrangements were made to meet in the Cloverleaf Tavern in Dover, Ohio. Bonnell reported this telephone conversation to the Multi-County Narco Bureau which then tried to gather $1750, but only succeeded in raising $1320. This money was photocopied so it could be traced. Bonnell then proceeded in his pickup truck to the point where he had prearranged to meet with Mr. Doyle. From and after the time Mr. Bonnell met Mr. Doyle and also Mr. Richard Wood in Dover, he was at that time and from then on under constant surveillance by an agent from the Multi-County Narco Bureau, Kenneth Beamer, Agent in charge of Multi-County Narco Bureau, Captain Jack Griffin of the Dover Police Department, Chief Deputy Hobert White of the Tuscarawas County Sheriff's Department and several others.

At approximately 12:30 to 1:00 A.M., Mr. Bonnell was seen by the agents and deputies conducting the surveillance, leaving the Cloverleaf Tavern and going across the street to Nickie's Tavern. Mr. Bonnell was then seen leaving this tavern in the company of Richard Wood. Mr. Doyle was at this time going to pick up the marijuana which was stashed in a culvert on Route 39. Bonnell and Wood got in Bonnell's truck and proceeded across Tuscarawas Avenue to New Philadelphia, Ohio. They parked the pickup truck on North Broadway just north of Beech Lane, near the Club 224 on North Broadway in New Philadelphia.

A very short time later the officers who conducted the surveillance observed a 1973 Oldsmobile Cutlass, driven by Jefferson Doyle, pulled up beside or to the rear of the Bonnell pickup truck. Mr. Doyle flashed his lights. The pickup truck proceeded into the rear of the parking lot of the 224 Club and both vehicles then were in the 224 Club parking lot. Captain Griffin, one of the officers conducting the surveillance, observed Mr. Bonnell receiving a large brown paper bag through the window from Mr. Doyle and saw Mr. Wood get out of the pickup truck and get in the car with Doyle. At this time the parties separated and both vehicles turned right on Second Drive and proceeded North. The surveillance was continued and Doyle and Wood were followed on their route through New Philadelphia. A few minutes later Mr. Doyle and Mr. Wood were arrested for the sale of marijuana to Mr. Bonnell by Agent Beamer of the Multi-County Narco Bureau. In the meantime Mr. Bonnell had surrendered himself and the brown paper bag to the authorities. It was found to contain ten (10) pounds of cannabis sative L. (marijuana).

After Doyle and Wood were arrested, Agent Beamer contacted Mr. Arthur B. Cunningham, Prosecuting Attorney of Tuscarawas County, for aid in preparing an affidavit for a search warrant, which warrant was approved by Judge Raymond C. Rice. This warrant was served and executed upon Doyle and Wood. Mr. Beamer, in the presence of Doyle and Wood, went to the place

where the 1973 Cutlass had been stopped and under guard until the warrant was obtained, and searched the automobile. Mr. Beamer discovered, under the floor mat on the passenger's side of the car, a wad of money. The money was immediately examined by Mr. Beamer and checked against the list of money he had previously copied and he noted that it was the same money he had earlier given to Mr. Bonnell.

We consider each assigned error in turn.

1.

No "refusal to allow exploration into" the system of jury selection appears in the record. Appellant's counsel did not ask to "explore" or produce evidence. He made a brief legal argument respecting certain journal entries and concluded saying (R. 8):

"Thats all we have on that motion Your Honor."

2.

There is no error demonstrated respecting a failure to change venue. There is no record of the voir dire examination of prospective jurors. The record says simply (R. 122 A):

"Thereupon a jury was duly impaneled and sworn."

This recital is conclusive upon us in the absence of an affirmative showing to the contrary. None has been made.

3.

Cross examination of the witness Bonnell respecting his possible drug addiction was not erroneously restricted. Appellant was represented by skilled counsel who abandoned this subject before he really ever got started upon it, after a few questions about past use of benzedrene. The court asked counsel to show relevance whereupon the inquiry was suddenly dropped. (R. 178, 179).

(By Mr. Willis)

Q. You used drugs, didn't you?
MR. CUNNINGHAM: Objection, Your Honor.
THE COURT: Sustained.
Q. Mr. Bonnell, in your life have you ever used narcotics?
MR. CUNNINGHAM: Objection.
THE COURT: Sustained.
Q. You know what narcotics is, don't you?
A. Yes.
Q. Now specifically referring to benzedrine, do you know what that is?
MR. CUNNINGHAM: Objection, Your Honor, we are talking about 10 lbs. of marijuana.
MR. WILLIS: We are talking about his credibility too.
THE COURT: Objection will be sustained.
Q. Did you ever testify that you use narcotics, Mr. Bonnell?
MR. CUNNINGHAM: Objection!
Q. Isn't it a fact that you testified that you used--
MR. CUNNINGHAM: Objection!
MR. WILLIS: (Continuing) Benzedrine?
MR. CUNNINGHAM: Object!
THE COURT: It appears irrelevant unless it can be shown otherwise the objection will be sustained. (R. 178).

4.

The State's witness Captain Griffin, when cross examined by appellant's counsel respecting his surveillance of the "sale" (R. 362-3):

Q. Now, when you finally came to a stop, you said you saw the informant standing with a package under his arm?
A. Yes.

Q. Did you see where the package came from?
A. He was standing on the passenger side,—driver's side of the automobile, and—no, he came from the car but I couldn't see.

Thereafter, upon re-direct, (R. 371) the prosecutor asked him about a report (State's Exhibit 11) which Griffin then identified as the report of the transaction prepared by himself and Hobert White (R. 371 lines 6 & 7) and testified, in substance, that he said in the report what he had just said on the witness stand.

We find this was justified by the challenging manner of the cross examination. No error appears. See Harris v. New York, 401 U.S. 222 (1971).

5.

Although Richard Wood was not on trial here, he testified as a defense witness for appellant Doyle. He gave a detailed narrative calculated to exculpate Doyle. He was cross examined by the prosecutor in such a manner as to demonstrate he had not told this story at his first or other earlier opportunities.

We find no error. This is proper cross examination bearing upon the credibility of the witness.

6.

Both appellant Doyle, after he testified on direct as a witness for himself in his own case in chief, and his co-defendant Wood who (although not then on trial) appeared as a defense witness, were cross examined in such a way as to develop the fact that upon first confrontation with the authorities they did not consent to a search of the car.

This was not a subject adduced by the state in its case in chief offered as substantive evidence of guilt but rather cross examination of a witness bearing upon the limited purpose of credibility. Concededly this could not have been shown in the states case in chief but used as

it was on this state of the record for this limited purpose, it was not error.

7.

After the defendant-appellant took the stand and testified in detail as to a narrative of events he claimed to be exculpating, he was cross-examined by the prosecutor, in substance, as to why he did not give this same account when first confronted by the authorities (R. 504-508).

This was not evidence offered by the state in its case in chief as confession by silence or as substantive evidence of guilt but rather cross examination of a witness as to why he had not told the same story earlier at his first opportunity.

We find no error in this. It goes to credibility of the witness.

8.

This assignment goes to the fact that the prosecutor argued to the jury the facts he developed on the cross-examination of the defendant Doyle and his witness Richard Wood which have been discussed in assignments 5, 6 and 7.

There we held the matters were not improperly shown and here we hold they were not improperly argued to the jury.

9.

The ninth assignment of error complains of the refusal of the trial court to give the jury a "cautionary" instruction respecting the testimony of the witness Bonnell, a claimed participant in the illegal sale.

We find no error. In State v. Flonnory, (1972) 31 O.S. 2d. 124, the fourth paragraph of the syllabus reads:

> "4. An instruction to the jury in a criminal case that the testimony of an accomplice is to be "acted upon with the extreme caution" is improper as constituting a comment upon the evidence."

We hold that rule governs here.

10. and 11.

From a careful reading of the record, we find the judgment is not against the manifest weight of the evidence and not contrary to law.

The state's chemist testified that the substance sold was "Cannabis Sativa" commonly knows as marijuana. Appellant argues the state loses unless the witness says the magic letter "L" thereafter, sic, "Cannabis Sativa L". This argument is not well taken. It is clear that the legislature intended by the use of the capital letter "L" after the words "cannabis sativa" to indicate the system of botanical classification.

12.

It is not true in fact that the prosecution at R. 527 or elsewhere, expressed a personal opinion upon the issue of innocence or guilt, or upon the credibility of any witness, nor did he otherwise by his argument, put his own credibility or prestige in the community into the balance.

For the foregoing reasons all twelve assigned errors are overruled, the judgment of the Court of Common Pleas of Tuscarawas County is affirmed and this cause is remanded to that court for the execution of sentence.

Rutherford, J. and Van Nostran, J. concur.

/s/ Norman J. Putman

/s/ Paul D. Van Nostran

/s/ Leland Rutherford
Judges

IN THE COURT OF APPEALS, FIFTH DISTRICT
TUSCARAWAS COUNTY

CASE NO. CA 1109

STATE OF OHIO, PLAINTIFF-APPELLEE

vs.

RICHARD WOOD, DEFENDANT-APPELLANT

MEMO

Decided ————————

[Filed Jan. 6, 1975, Court of Appeals, Tuscarawas County, Ohio, Robert E. Moore, Clerk]

JUDGES:

Hon. Norman Putman, P.J.
Hon. Leland Rutherford, J.
Hon. Paul Van Nostran, J.

APPEARANCES:

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Counsel for Plaintiff-Appellee

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Counsel for Defendant-Appellant

PUTMAN, P.J.

This appeal is a companion case to No. 1108, Ohio v. Doyle. By agreement of all counsel, both were argued and considered together for the reason that they arise out of a joint indictment and a single transaction and al-

though each appellant had a separate trial, both appellants were represented at trial and here by the same skillful and experienced counsel.

Eleven errors are assigned as hereafter set forth. Because all except Nos. #4 and #7 are the same as in the Doyle case (No. 1108) we set forth for the purpose of convenience the appropriate number given the assignment of error in Doyle.

1. The court erred in failing to grant a change of venue. (Doyle No. 2)
2. The court erred in permitting the State, under the guise of refreshing the witness Griffin's recollection, to show a significant segment of an unsigned written report made by another and different officer. (Doyle No. 4)
3. The court erred in permitting the prosecutor to interrogate the witness Doyle in a manner suggesting his (Doyle's) failure to disclose the substance of his testimony, or to otherwise "protest his innocence," at the time of his arrest was a factor that could properly be considered by the jury in determining his credibility. (Doyle No. 5)
4. The court erred in permitting the prosecution to develope through the testimony of the witness Beamer that the defendant refused to consent to the search of the car.
5. The court erred in permitting the prosecution to develope, through his cross-examination of the defendant, that he did not "protest his innocence" upon being arrested. (Doyle No. 7)
6. The court erred in permitting the prosecution to develope, through the cross-examination of the appellant, that he did not "protest his innocence" upon being arrested. (Doyle No. 7) (Notice this is a repeat)
7. The court erred and the appellant was deprived of a fair trial as a consequence of the following circumstances: Pursuant to Rule 16, the prosecutor informed the defense that no statements (admissions or confessions) were made by either the wit-

ness Doyle or the appellant. Despite the apparent reliance of the defense on the prosecutor's response, and in spite of his continuing duty to disclose, the Court allowed the State to show that certain crucial admissions were in fact made.

8. The prosecutor was guilty of misconduct in arguing to the jury that the failure of the witness Doyle, and the appellant, to protest their innocence, or to otherwise disclose their defense, earlier than at the trial, and that their failure to consent to a search of the vehicle, were circumstances that could be weighed in arriving at a verdict in this case. (Doyle No. 8)
9. The court erred in failing to give, or appropriately incorporate into its general charge, the special request submitted by the appellant. (Doyle No. 9)
10. The court erred in denying the various motions (including, but not limited to the motion for judgment of acquittal) made at the close of all the evidence. (Doyle No. 10)
11. The verdict of the jury is against the manifest weight of the evidence and is contrary to law. (Doyle No. 11).

Our memorandum in the case of Ohio vs. Doyle, Tuscarawas County No. 1108, is incorporated herein by reference and made a part hereof as fully as if rewritten herein in full. Appellant's counsel concedes the state's case in chief was substantially the same in both cases. Counsel concedes and we find that both trials were conducted substantially the same even though Doyle was tried before Judge Rice and Wood was tried before Judge Spies. We move now to consider each assigned error in turn.

1.

No error appears respecting the refusal of the trial court to change venue. No record of the voir dire examination of jurors was presented us. The record we do have recites merely (R. 11) that:

"Thereupon a jury was duly impaneled and sworn."

Nothing to the contrary appears.

2.

We find no error in the use by the prosecuting attorney of the report prepared by Capt. Griffin and another, to refresh the recollection of Capt. Griffin upon re-direct examination, taking into consideration the nature of the cross-examination. (R. 272-289 of the Wood case)

3.

Here Doyle, not on trial, was called by Wood in the defense case in chief. The cross-examination was not improper for the same reasons stated in the Doyle memorandum respecting assignment No. 5 in the Doyle case.

4.

Here the state called the witness Beamer in rebuttal to rebut statements made by the witness Jefferson Doyle when cross-examined by the prosecutor. Doyle (not on trial) was testifying in defense of Wood having been called by the defense. Doyle volunteered in cross-examination by the prosecutor, details of a conversation between Doyle and Beamer at the time of his first confrontation with the authorities, at the time of the transaction in question, the night both Doyle and Wood were arrested. (R. 425-429)

This trial of Wood took place in October of 1973 after the Doyle trial had been completed in July of 1973.

No similar incident respecting a clash between the testimony of Doyle and Beamer had developed in the Doyle trial.

We find the testimony of Beamer was proper rebuttal to the testimony of Doyle, and that a proper foundation for the same was laid in cross-examination.

The court held a hearing outside the presence of the jury and found the rebuttal proper. (R. 487). A proper

instruction limiting the use of the testimony to the purpose of impeachment of the witness was given (R. 488).

The court properly found the prosecutor had not violated Criminal Rule 16 by not informing the defense of this rebuttal evidence before trial (R. 487).

5.

This assignment raises the same legal point as assignment No. 7 in the Doyle case and is overruled for the reasons given there. This was not evidence used in the state's case in chief but cross-examination for the purpose of affecting credibility.

6.

This assignment is an apparent inadvertent repeat of No. 5 above.

7.

This assignment is preculiar to this case and did not arise in Doyle's case. The appellant here complains that the prosecutor under Criminal Rule 16, said in writing, August 31, 1973,

> "Defendant made no statements at the time of arrest."

The trial of the case commenced in October, 1973. After the defendant Wood, and co-defendant, not on trial, Doyle, testified for the defense, the prosecutor recalled Kenneth Beamer, who had participated in the investigation and arrest of the defendants. He testified (R. 486-494):

Q. . . . At any point subsequent to the time you placed Doyle or Mr. Wood under arrest, did you have an opportunity to have a conversation with Mr. Doyle?
A. Yes, sir.
Q. And when did you have such conversation?

A. After the search of the vehicle some time after 6:00 a.m. in the morning I took him back to the county jail. He rode in my car.
Q. Jefferson Doyle?
A. Yes.
Q. And what was the circumstances of that conversation?
MR. WILLIS: Objection.
THE COURT: You may answer.
A. I stated to Mr. Doyle on the way back, I said Jeff, what are you doing in the dope business, and he said, I don't know, Kenny, I don't know. I stated that I had heard there may be more out on Route 39 in a ditch or culvert. . .

• • • •

A. I said if you have more, Jeff, I want it—I want it all. He said there isn't any more. That is all we had with us.

• • • •

Q. So it is fair to say, is it not, Mr. Beamer, that he didn't protest his innocence?
MR. WILLIS: Objection.
THE COURT: He may answer.
A. That is correct, sir.
Q. All right, now, referring your attention specifically to Richard Wood, to this defendant did you have an conversation with the defendant Richard Wood?
MR. WILLIS: Objection.
THE COURT: Overruled.
A. Yes.
Q. And Kenny, did you have an opportunity to have any conversation with the defendant, Richard Wood, at that time and place?
A. Yes sir.
Q. When was that?
A. Just moments after we all arrived at the Tuscarawas County Jail.

Q. Advise us what the nature or circumstances of that conversation was.
MR. WILLIS: Objection.
THE COURT: Overruled.

• • • •

THE COURT: He asked you when or if you had any further conversations.
A. Yes.
Q. At the same time?
A. Yes.
Q. What was the nature or circumstances of that conversation?
A. I asked Mr. Wood if he would sign a consent to search his vehicle.
MR. WILLIS: Object and move the answer be stricken and the jury instructed to disregard it.
THE COURT: Now I think this witness has testified to that—permission was not given.
MR. WILLIS: I asked that the jury be instructed that no person is required to give consent and no inference can be drawn from that.
THE COURT: The court will instruct the jury that consent was not given nor is there any responsibility that consent should be given under the factual set up in this case.
Q. At any time, Mr. Beamer, did Mr. Richard C. Wood protest his innocence to you?
MR. WILLIS: Objection.
THE COURT: Overruled. You may answer yes or no.
A. No, sir.
Q. Kenny, at any time did Mr. Wood indicate to you that he had or felt he was framed or set up?
MR. WILLIS: Objection.

THE COURT: Overruled.
A. No, sir.

• • • •

Q. At any time after the time he was placed under arrest thru the period of the subsequent investigation that morning did Mr. Richard Wood tell you that he was innocent—that he had been set up or framed, or both?
THE PROSECUTOR: Not for that entire period of time.
THE COURT: You many answer yes or not.
A. No, sir he did not. (R. 486-494)

Agent Beamer testified he had not written a summary of his conversation with Doyle and he had not told the prosecutor of his oral statement at the time defendant-appellant requested discovery (R. 496-497) and he further added he only told the prosecutor of the statement on the day before he testified as a rebuttal witness, Thursday, October 4, 1973, the third day of trial, after he had already testified as a state witness in its case in chief.

We find no showing that the prosecutor was aware of this oral statement to Agent Beamer before the trial of the case. (R. 515-516).

8.

We find the prosecutor was not guilty of misconduct in arguing to the jury the issue of credibility of the witness Doyle and the witness defendant Wood and pointing to their failure to assert their narratives at the earliest opportunity.

The same reasons apply here as in the eighth assignment in the Doyle case.

9.

The cautionary instruction respecting the testimony of the state's witness Beamer was properly refused. State v. Flonnory, 31 O.S. 2d. 124, paragraph 4 of the syllabus.

10. & 11.

We find from a careful reading of the record that the judgment is not against the manifest weight of the evidence and not contrary to law.

For the foregoing reasons all eleven assigned errors are overruled, the judgment of the Court of Common Pleas of Tuscarawas County is affirmed and this cause is remanded to that court for execution of sentence.

Rutherford, J. and Van Nostran, J. concur.

/s/ Norman J. Putman

/s/ Paul D. Van Nostran

/s/ Leland Rutherford
Judges

THE SUPREME COURT OF THE
STATE OF OHIO

1975 TERM

No. 75-177

THE STATE OF OHIO)
)
CITY OF COLUMBUS)

To wit: April 25, 1975

STATE OF OHIO, APPELLEE

vs.

JEFFERSON DOYLE, APPELLANT

MOTION FOR LEAVE TO APPEAL FROM THE
COURT OF APPEALS FOR TUSCARAWAS COUNTY

It is ordered by the Court that this motion is overruled.

THE SUPREME COURT OF OHIO

1975 TERM

No. 75-177

THE STATE OF OHIO)
)
CITY OF COLUMBUS)

To wit: April 25, 1975

STATE OF OHIO, APPELLEE

vs.

JEFFERSON DOYLE, APPELLANT

APPEAL FROM THE COURT OF APPEALS
FOR TUSCARAWAS COUNTY

This cause, here on appeal as of right from the Court of Appeals for Tuscarawas County, was heard in the manner prescribed by law, and, on motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Tuscarawas County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court
this ..... day of ..... 19..

_____ Clerk

_____ Deputy

THE SUPREME COURT OF THE
STATE OF OHIO

1975 TERM

No. 75-177

THE STATE OF OHIO)
)
CITY OF COLUMBUS)

To wit: April 11, 1975

STATE OF OHIO, APPELLEE

vs.

RICHARD WOOD, APPELLANT

MOTION FOR LEAVE TO APPEAL FROM THE
COURT OF APPEALS FOR TUSCARAWAS COUNTY

It is ordered by the Court that this motion is overruled.

THE SUPREME COURT OF OHIO

1975 TERM

No. 75-178

THE STATE OF OHIO)
)
CITY OF COLUMBUS)

To wit: April 11, 1975

STATE OF OHIO, APPELLEE

vs.

JEFFERSON DOYLE, APPELLANT

APPEAL FROM THE COURT OF APPEALS
FOR TUSCARAWAS COUNTY

This cause, here on appeal as of right from the Court of Appeals for Tuscarawas County, was heard in the manner prescribed by law, and, on motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

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_____ Clerk

_____ Deputy

SUPREME COURT OF THE UNITED STATES

Nos. 75-5014 and 75-5015

JEFFERSON DOYLE, PETITIONER

v.

OHIO; and

RICHARD WOOD, PETITIONER

v.

OHIO

On Petitions for Writs of Certiorari to the Court of Appeals of the State of Ohio, Tuscarawas County

ON CONSIDERATION of the motions for leave to proceed herein in forma pauperis and of the petitions for writs of certiorari, it is ordered by this Court that the motions to proceed in forma pauperis be, and the same are hereby, granted; and that the petitions for writs of certiorari be, and the same are hereby, granted, limited to Questions 1 and 2 presented by the petitions which read as follows:

"1. Whether an accused who asserts his right of silence and his right to counsel following his arrest properly subjects himself:

a) to questions as to why he did not protest his innocence at the point of arrest, at the Preliminary Hearing, or at some time earlier than at the trial;

b) to the prosecutor's argument to the jury that an unfavorable inference could be drawn against the accused as a consequence of his having exercised these constitutional rights;

c) to questions as to why he did not consent to the search of the car (thus necessitating obtaining a search warrant) and to an argument on this point.

"2. Whether a defense witness who was arrested and charged along with the defendant on trial can be properly asked why he did not protest his innocence earlier than at the trial, and can the prosecutor argue this point to the jury?"

The cases are consolidated and a total of one hour is allotted for oral argument.

October 6, 1975

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